

§ 23.9

plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

[34 FR 852, Jan. 18, 1969, as amended at 48 FR 27016, June 10, 1983]

§ 23.9 Performance bond.

(a)(1) Upon approval of an exploration plan or mining plan, the operator shall be required to file a suitable performance bond of not less than \$2,000 with satisfactory surety, payable to the Secretary of the Interior, and the bond shall be conditioned upon the faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the exploration or mining plan as approved, amended or supplemented. The bond shall be in an amount sufficient to satisfy the reclamation requirements of an approved exploration or mining plan, or an approved partial or supplemental plan. In determining the amount of the bond consideration shall be given to the character and nature of the reclamation requirements and the estimated costs of reclamation in the event that the operator forfeits his performance bond.

(2) In lieu of a performance bond an operator may elect to deposit cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be equal at least to the required sum of the bond.

(b) A bond may be a nationwide or statewide bond which the operator has filed with the Department under the provisions of the applicable leasing regulations in subchapter C of chapter II of this title, if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(c) The district manager shall set the amount of a bond and take the necessary action for an increase or for a complete or partial release of a bond. He shall take action with respect to bonds for leases or permits only after consultation with the mining supervisor.

(d) Performance bonds will not be required of Federal, State, or other governmental agencies. Where the exploration or mining is actually performed

43 CFR Subtitle A (10-1-08 Edition)

for such Federal, State, or governmental agencies by a contractor who would have to post a bond under the terms of paragraph (a) of this section if he were the operator, such agencies shall require the contractor to furnish a bond payable to the United States which meets the requirements of paragraph (a) of this section. If, for some other purpose, the contractor furnishes a performance bond, an amendment to that bond which meets the requirements of paragraph (a) of this section will be acceptable in lieu of an additional or separate bond.

[34 FR 852, Jan. 18, 1969, as amended at 35 FR 11237, July 14, 1970]

§ 23.10 Reports: Inspection.

(a)(1) The holder of a permit or lease under the mineral leasing acts shall file the reports required by this section with the mining supervisor.

(2) The provisions of this section confer authority and impose duties upon mining supervisors with respect to permits or leases issued under the mineral leasing acts.

(b) Operations report: Within 30 days after the end of each calendar year, or if operations cease before the end of a calendar year, within 30 days after the cessation of operations, the operator shall submit an operations report containing the following information:

(1) An identification of the permit, lease, or contract and the location of the operation;

(2) A description of the operations performed during the period of time for which the report is filed;

(3) An identification of the area of land affected by the operations and a description of the manner in which the land has been affected;

(4) A statement as to the number of acres disturbed by the operations and the number of acres which were reclaimed during the period of time;

(5) A description of the method utilized for reclamation and the results thereof;

(6) A statement and description of reclamation work remaining to be done.

(c) Grading and backfilling report: Upon completion of such grading and backfilling as may be required by an approved exploration or mining plan,

the operator shall make a report thereon and request inspection for approval. Whenever it is determined by such inspection that backfilling and grading has been carried out in accordance with the established requirements and approved exploration or mining plan, the district manager shall issue a release of an appropriate amount of the performance bond for the area graded and backfilled. Appropriate amounts of the bond shall be retained to assure that satisfactory planting, if required, is carried out.

(d) Planting report: (1) Whenever planting is required by an approved exploration or mining plan, the operator shall file a report with the mining supervisor or district manager whenever such planting is completed. The report shall—

- (i) Identify the permit, lease, or contract;
- (ii) Show the type of planting or seeding, including mixtures and amounts;
- (iii) Show the date of planting or seeding;
- (iv) Identify or describe the areas of the lands which have been planted;
- (v) Contain such other information as may be relevant.

(2) The mining supervisor or district manager, as soon as possible after the completion of the first full growing season, shall make an inspection and evaluation of the vegetative cover and planting to determine if a satisfactory growth has been established.

(3) If it is determined that a satisfactory vegetative cover has been established and is likely to continue to grow, any remaining portion of the performance bond may be released if all requirements have been met by the operator.

(e) Report of cessation or abandonment of operations: (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall report his intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his operations, the extent of reclamation accomplished and other relevant information.

(2)(i) Upon receipt of such report the mining supervisor or the district manager shall make an inspection to deter-

mine whether operations have been carried out and completed in accordance with the approved exploration or mining plan.

(ii) Whenever the lands in a permit, lease or contract issued under the mineral leasing acts are under the jurisdiction of a bureau of the Department of the Interior other than the Bureau of Land Management the mining supervisor or the district manager, as appropriate, shall obtain the concurrence of the authorized officer of such bureau that the operation has been carried out and completed in accordance with the approved exploration or mining plan with respect to the surface protection and reclamation aspects of such plan before releasing the performance bond.

(iii) Whenever the lands in a permit, lease or contract issued under the Mineral Leasing Act of 1920 are under the jurisdiction of an agency other than the Department of the Interior, the mining supervisor or the district manager, as appropriate, shall consult representatives of the agency administering the lands and obtain their recommendations as to whether the operation has been carried out and completed in accordance with the approved exploration or mining plan with respect to the surface protection and reclamation aspects of such plan before releasing the performance bond. If the mining supervisor or district manager, as appropriate, do not concur in the recommendations of the agency regarding compliance with the surface protection and reclamation aspects of the approved exploration or mining plan, the issues shall be referred for resolution to the Under Secretary of the Department of the Interior and the comparable officer of the agency submitting the recommendations. In the case of disagreement on issues which are so referred, the Secretary of the Interior shall make a determination which shall be final and binding. In cases in which the recommendations are not concurred in by the mining supervisor or district manager, the performance bond shall not be released until resolution of the issues or until a final determination by the Secretary of the Interior.

§ 23.11

(iv) Whenever the lands in a permit or lease issued under the Mineral Leasing Act for Acquired Lands are under the jurisdiction of an agency other than the Department of the Interior, the mining supervisor or the district manager, as appropriate, shall obtain the concurrence of the authorized officer of such agency that the operation has been carried out and completed in accordance with the approved exploration or mining plan with respect to the surface protection and reclamation aspects of such plan before releasing the performance bond.

[34 FR 852, Jan. 18, 1969, as amended at 48 FR 27016, June 10, 1983]

§ 23.11 Notice of noncompliance: Revocation.

(a) The provisions of this section confer authority and impose duties upon mining supervisors with respect to permits or leases issued under the mineral leasing acts. The Mining supervisor shall consult with the district manager before taking any action under this section.

(b) The mining supervisor or district manager shall have the right to enter upon the lands under a permit, lease, or contract, at any reasonable time, for the purpose of inspection or investigation to determine whether the terms and conditions of the permit, lease, or contract, and the requirements of the exploration or mining plan have been complied with.

(c) If the mining supervisor or the district manager determines that an operator has failed to comply with the terms and conditions of a permit, lease, or contract, or with the requirements of an exploration or mining plan, or with the provisions of applicable regulations under this part the supervisor or manager shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address.

(d) A notice of noncompliance shall specify in what respects the operator has failed to comply with the terms and conditions of a permit, lease, or contract, or the requirements of an exploration or mining plan, or the provisions of applicable regulations, and

43 CFR Subtitle A (10–1–08 Edition)

shall specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(e) Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for suspension by the mining supervisor or the district manager of operations or for the initiation of action for the cancellation of the permit, lease, or contract and for forfeiture of the performance bond required under § 23.9.

[34 FR 852, Jan. 18, 1969, as amended at 48 FR 27016, June 10, 1983]

§ 23.12 Appeals.

(a) A person adversely affected by a decision or order of a district manager or of a mining supervisor made pursuant to the provisions of this part shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, whenever the decision appealed from was rendered by a district manager, or to the Director of the Geological Survey if the decision or order appealed from was rendered by a mining supervisor, and the further right to appeal to the Board of Land Appeals from an adverse decision of the Director of the Geological Survey unless such decision was approved by the Secretary prior to promulgation.

(b) Appeals to the Board of Land Appeals shall be made pursuant to part 4 of this title. Appeals to the Director of the Geological Survey shall be made in the manner provided in 30 CFR part 290.

(c) In any case involving a permit, lease, or contract for lands under the jurisdiction of an agency other than the Department of the Interior, or a bureau of the Department of the Interior other than the Bureau of Land Management, the officer rendering a decision or order shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or briefs must be served.

(d) Hearings to present evidence on an issue of fact before an administrative law judge may be ordered by the Board of Land Appeals or the Director of the Geological Survey, as the case